

REMARKS

Claims 1-6 are pending in this application. Claim 7 has been cancelled. Support for the amendment to claim 1 can be found in cancelled claim 7. No new matter has been added by way of the above-amendment.

*Fujii et al., USP 5,929,140*

The following rejections are pending:

a) Claims 1-5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fujii et al.; and

b) Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujii et al.

Applicants respectfully traverse each of the rejections.

Applicants respectfully submit that the present invention is neither anticipated nor rendered obvious by the cited references; however, in order to advance prosecution, Applicants have amended claim 1 to recite the subject matter of claim 7, a claim not currently under rejection. Accordingly, these rejections are rendered moot.

Isogawa, USP 6,551,395 and Uraki et al., USP 5,972,087

Claims 1-5 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Isogawa in view of Uraki et al. Applicants respectfully traverse the rejection.

*Applicant respectfully submits that Isogawa is not available as prior art.*

*Issues Under 35 U.S.C. § 102(e)/§ 103(c)*

According to MPEP § 706.02(1)(1), effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. § 103 via 35 U.S.C. § 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made" owned by the same person or subject to an obligation of assignment to the same person."

MPEP § 706.02(1)(2) instructs that an attorney or agent of record may make a statement to the effect that that application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Statement Evidencing Common Ownership

The present application, and U.S. Patent 6,551,395 to Isogawa were, at the time the invention was made, owned by, or subject to

an obligation of assignment to, the same person.

Consequences Of The Above-Statement

Accordingly, Applicant respectfully submits that the U.S. Patent to Isogawa, is not available as prior art under 35 U.S.C. § 102(e)/§ 103(c). As such, withdrawal of the rejection is respectfully requested.

JP 2001-262034 (hereinafter JP '034)

Isogawa, USP 6,551,395, is in the same patent family as JP '034 which was published September 26, 2001. As such, theoretically claims 1-5 and 7 could be rejected over the combination of JP '034 and Uraki et al.

To remove JP '034 from the prior art, Applicants herein perfect priority by enclosing a verified English translation of the instant priority document, Japanese Application No. 2001-5685 (JP '685). Since JP '685 has an earlier filing date, January 12, 2001, then the publication date of JP '034, September 26, 2001, JP '034 is not available as prior art. The Examiner should note that JP '685 enables the skilled artisan to make and/or use the presently claimed invention and the presently claimed invention has

sufficient written description support in JP '685 as required by 35 U.S.C. § 112, first paragraph.

**Priority Documents**

Applicants note from the Office Action Summary Form (PTO-326) enclosed with the outstanding Office Action, that the Examiner has indicated that none of the priority documents have been received. Applicants respectfully submit that a certified copy of the priority document was filed with the application materials on December 21, 2001. Applicants enclose herewith a stamped postcard receipt as evidence that the certified priority documents were filed.

The Examiner is requested to indicate in the next communication receipt of the certified priority documents.

**Conclusion**

In view of the above-amendments and comments, Applicants respectfully submit that the claims are in condition for allowance. A Notice to such effect is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., (Reg. No. 43,575) at the telephone number of the undersigned below, to

conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants hereby petition for an extension of one (1) month to November 24, 2003 in which to file a reply to the Office Action. The required fee of \$110.00 is enclosed herewith.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 

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Enclosures:      1) Verified English Translation of JP Application  
                              No. 2001-5685  
                              2) Stamped Postcard